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7
8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues Against:

Case No. 1H 2008 141

11 DAVID LELAND MAYDOLE
12 P. O. Box 924
Durham, CA 95938

STATEMENT OF ISSUES

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14 Applicant/Respondent.
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17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs.

22 2. On or about March 5, 2008, the Respiratory Care Board of California,
23 Department of Consumer Affairs received an application for a Respiratory Care Practitioner
24 license from David Leland Maydole (Respondent). On or about February 22, 2008, David
25 Leland Maydole certified under penalty of perjury to the truthfulness of all statements, answers,
26 and representations in the application. The Board denied the application on July 30, 2008.

27 JURISDICTION

28 3. This Statement of Issues is brought before the Respiratory Care Board

1 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 3710 of the Code states: "The Respiratory Care Board of
4 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
5 8.3, the Respiratory Care Practice Act]."

6 5. Section 3718 of the Code states: "The board shall issue, deny, suspend,
7 and revoke licenses to practice respiratory care as provided in this chapter."

8 6. Section 3750 of the Code states:

9 "The board may order the denial, suspension or revocation of, or the imposition of
10 probationary conditions upon, a license issued under this chapter, for any of the following
11 causes:

12 "(d) Conviction of a crime that substantially relates to the qualifications,
13 functions, or duties of a respiratory care practitioner. The record of conviction or a
14 certified copy thereof shall be conclusive evidence of the conviction.

15 "(g) Conviction of a violation of any of the provisions of this chapter or of any
16 provision of Division 2 (commencing with Section 500), or violating, or attempting to
17 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
18 violate any provision or term of this chapter or of any provision of Division 2
19 (commencing with Section 500).

20 "(j) The commission of any fraudulent, dishonest, or corrupt act which is
21 substantially related to the qualifications, functions, or duties of a respiratory care
22 practitioner."

23 7. Section 3732 of the Code states:

24 "(a) The board shall investigate an applicant for a license, before a license is
25 issued, in order to determine whether or not the applicant has the qualifications required
26 by this chapter.

27 "(b) The board may deny an application, or may order the issuance of a
28 license with terms and conditions, for any of the causes specified in this chapter for

1 suspension or revocation of a license, including, but not limited to, those causes
2 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

3 8. Section 3752 of the Code states:

4 "A plea or verdict of guilty or a conviction following a plea of nolo
5 contendere made to a charge of any offense which substantially relates to the
6 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
7 a conviction within the meaning of this article. The board shall order the license
8 suspended or revoked, or may decline to issue a license, when the time for appeal
9 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
10 order granting probation is made suspending the imposition of sentence,
11 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
12 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
13 setting aside the verdict of guilty, or dismissing the accusation, information, or
14 indictment."

15 9. Section 3752.5 of the Code states:

16 "For purposes of Division 1.5 (commencing with Section 475), and this
17 chapter [the Respiratory Care Practice Act], a crime involving bodily injury or
18 attempted bodily injury shall be considered a crime substantially related to the
19 qualifications, functions, or duties of a respiratory care practitioner."

20 10. California Code of Regulations, title 16, section 1399.370, states:

21 "For the purposes of denial, suspension, or revocation of a license, a crime
22 or act shall be considered to be substantially related to the qualifications, functions
23 or duties of a respiratory care practitioner, if it evidences present or potential
24 unfitness of a licensee to perform the functions authorized by his or her license or
25 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
26 acts shall include but not be limited to those involving the following:

27 "(a) Violating or attempting to violate, directly or indirectly, or assisting or
28 abetting the violation of or conspiring to violate any provision or term of the Act."

1 COST RECOVERY

2 11. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the
4 board, the board or the administrative law judge may direct any practitioner or applicant
5 found to have committed a violation or violations of law to pay to the board a sum not to
6 exceed the costs of the investigation and prosecution of the case."

7 12. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution
9 shall include attorney general or other prosecuting attorney fees, expert witness fees, and
10 other administrative, filing, and service fees."

11 13. Section 3753.1 of the Code states:

12 "(a) An administrative disciplinary decision imposing terms of probation
13 may include, among other things, a requirement that the licensee-probationer pay the
14 monetary costs associated with monitoring the probation."

15 FIRST CAUSE FOR DENIAL OF APPLICATION

16 (Substantially-related convictions)

17 14. Respondent's application is subject to denial under code sections
18 3750(d), 3752, 3752.5 and CCR 1399.370(a) in that he has two convictions for violating
19 Penal Code section 273.5 (corporal injury to a spouse.) The circumstances are as follows:

20 2002 conviction

21 15. On or about December 9, 2001, Butte County Deputy Sheriff T.W.
22 Lawler was dispatched to Feather River Hospital to interview A.M. regarding a domestic
23 violence dispute. A.M. stated that she is married to Respondent, and they have an eight
24 and half month old son. On December 9, 2001, at about 7:30 p.m., she arrived at her
25 apartment after leaving a bridal shower for Respondent's sister. Respondent and A.M.
26 began arguing, and Respondent stated that he was going to move out of the apartment.
27 Respondent grabbed A.M. by the throat with his left hand and began to choke her. A.M.
28 said she felt dizzy and almost passed out because she could not breathe. A.M. stated that

1 while Respondent was choking her, he pushed her backwards onto a chair, which caused
2 her to fall down onto the floor. She got away from Respondent, went into the bathroom
3 and locked the door because she was afraid of Respondent. Respondent left the apartment,
4 and A.M. sought medical treatment at Feather River Hospital. She stated that she could
5 only whisper for about ten hours after Respondent choked her because her throat was very
6 sore. She stated that she wanted to press charges against Respondent.

7 16. Deputy Lawler interviewed Respondent about the incident.
8 Respondent stated that A.M. yelled at him for no reason, and kneed him in the groin area.
9 He stated that he then left the apartment. Deputy Lawler asked Respondent if he touched
10 A.M. in any way during the argument, and he answered that he might have pushed A.M. in
11 the chest area after she kneed him in the groin. After further questioning, Respondent said
12 he pushed his wife “pretty hard” and that after he pushed her, she fell over a chair in the
13 living room. Deputy Lawler arrested Respondent for violating Penal Code section 273.5
14 (corporal injury to a spouse.)

15 17. On or about December 13, 2001 a felony criminal complaint titled
16 *People of the State of California vs. David Leland Maydole*, case no. CM016587 was filed
17 in Superior Court, Butte County. Count 1 charged Respondent with violating Penal Code
18 section 273.5(a) (corporal injury to a spouse), a felony. Count 2 charged Respondent with
19 violating Penal Code section 245(a)(1) (assault by means likely to produce great bodily
20 injury), a felony.

21 18. On or about January 16, 2002, Respondent entered a plea of no
22 contest to Count 1 and Count 2 was dismissed pursuant to a negotiated plea. The Court
23 accepted the plea, and a pre-sentence report was ordered. On February 13, 2002,
24 Respondent was convicted on his plea and the Court found a factual basis for the plea.
25 Imposition of sentence was suspended and Respondent was placed on formal probation for
26 four years under terms and conditions. On June 4, 2002, a Petition for violation of
27 probation was filed. On June 5, 2002, Respondent admitted a violation of probation and
28 formal probation was reinstated. He was ordered to serve an additional 30 days in jail.

1 19. On August 14, 2002, he was found in violation of probation. On
2 April 8, 2003, the Court received and considered a Penal Code section 1203.03 report, and
3 sentenced Respondent to state prison for two years with 600 days credit for time served,
4 and ordered him to attend a batterer treatment program as a condition of parole.

5 2003 Conviction

6 20. On or about July 17, 2002, at about 9:25 a.m., Butte County Deputy
7 Sheriff J.M. Waananen responded to a report of domestic violence. He spoke with A.M.,
8 who stated that she and her husband, Respondent, had been arguing about their possible
9 divorce since the prior night. A.M. stated that Respondent pushed her, then placed her in a
10 headlock and pushed her down onto the living room floor. She reported that Respondent
11 hit her in the back of her head with his fist, causing contusions. She stated that he kicked
12 her in the shoulder when she was on the floor. Deputy Waananen observed three swelling
13 contusions on her head. Respondent was not present in the residence when Deputy
14 Waananen interviewed A.M., and the Deputy reported this incident as a probation
15 violation to Respondent's probation officer.

16 21. On July 17, 2002, Respondent was arrested for violating Penal Code
17 section 273.5(a) (corporal injury to a spouse), a felony. On July 26, 2002, a criminal
18 complaint titled *People of the State of California vs. David Leland Maydole*, case no.
19 CM017632 was filed in Superior Court, Butte County. Count 1 charged Respondent with
20 violating Penal Code section 273.5(a) (corporal injury to a spouse), a felony. It was
21 further alleged that he had a prior conviction on February 13, 2002 for violating the same
22 Penal Code statute.

23 22. On August 14, 2002, Respondent entered a plea of guilty to an
24 amended charge of a misdemeanor violation of Penal Code section 273.5(a), and was
25 convicted on his plea. On April 8, 2003, he was sentenced to one year in prison to run
26 concurrently with the state prison sentence in case no. CM016587.

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23. Therefore, Respondent's application is subject to denial under code sections 3750(d), 3752, 3752.5 and CCR 1399.370(a) in that he has two convictions for violating Penal Code section 273.5 (corporal injury to a spouse.)

SECOND CAUSE FOR DENIAL

(Corrupt Act)

24. Paragraphs 15 through 22 above are incorporated herein.

25. Respondent's actions of committing corporal injury to a spouse on December 9, 2001 and July 17, 2002 constitute corrupt acts and are cause to deny his application under code section 3750(j).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of David Leland Maydole for a Respiratory Care Practitioner;

2. Directing David Leland Maydole to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

3. Taking such other and further action as deemed necessary and proper.

DATED: December 4, 2008

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant